Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

DONALD C. HUTCHINS,
Petitioner,

v.

THE COMPLIENT CORPORATION
Respondent

On Petition For Writ Of Certiorari
To The Supreme Court Of Ohio

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Donald C. Hutchins, *Pro Se*
1047 Longmeadow Street
Longmeadow, Massachusetts 01106
(413) 567-0606

ACTING *PRO SE* to
DONALD C. HUTCHINS

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Supreme Court of Ohio

Complient Corporation

v.

Donald C. Hutchins

Case No. 06-741

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

(Cuyahoga County Court of Appeals; No. 87822)

S/N
THOMAS J. MOYER
Chief Justice

FILED
AUG 02 2006
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

COMPLIENT CORPORATION
Appellee

COA NO. 87822

VS.

LOWER COURT NO.
CP CV-540068

DONALD C. HJUTCHINS
Appellant

MOTION NO. 381633

Journal Entry

SUA SPONTE APPEAL IS DISMISSSED FOR LACK OF A FINAL APPEALABLE ORDER. DOCKET REFLECTS AN UNRESOLVED COUNTERCLAIM, AND THERE IS A DETERMINATION OF LIABILITY FOR ATTORNEY FEES BUT NO DETERMINATION OF THE AMOUNT OF FEES. CIV.R. 54(B). FIREMAN'S FUND INS. CO. V. BPS CO. (1982), 4 OHIO APP.3D3. SEE, ALSO, PIERCE V. FISCHER (OCT. 22, 1992) CUYAHOGA APP. NO. 63366.

Judge FRANK D. CELEBREEZE, JR. Concurs

__S/N_____
Administrative Judge ANN DYKE

FILED AND JOURNALIZED
PER APP. R. 22[E]
MARCH 16 2006
GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY S/N_____ DEP.

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

DONALD C. HUTCHINS Plaintiff v. CARDIAC SCIENCE, INC. Defendant	C A 04-40126-MAP

COMPLAINT

Parties

1.) The plaintiff, Donald C. Hutchins ("Hutchins") is an individual residing at 1047 Longmeadow Street, Longmeadow, Hamden County, Massachusetts and a citizen of the United States.

2.) The defendant, Cardiac Science, Inc. ("Cardiac Science") is incorporated in the State of Delaware with a principal place of business at 1900 Main Street, Suite 700, Irvine, California 92614.

Jurisdiction

3.) The court has jurisdiction over this matter pursuant to Section 271 U.S.C.

4.) Hutchins lives in Longmeadow, Massachusetts and is a citizen of the United States.

5.) Cardiac is a corporation with its headquarters in Irvine, California. Cardiac markets products through the Channing Bete Company/ Distributor of American Heart Association Products. The Channing Bete Company is a Massachusetts company headquartered at One Community Place, South Deerfield, MA 01373.

Background

6.) On April 22, 1986 Hutchins was issued U.S. Patent Number 4,583,524-titled "CARDIOPULMONARY RESUSCITATION PROMPTING" attached herein as part of Exhibit A.

7.) On November 29, 1994 Hutchins was issued U.S. Reissued Patent Number Re.34,800-titled "CARDIOPULMONARY RESUSCITATION PROMPTING" attached herein as part of Exhibit B. The Patent ABSTRACT states in part, "A portable, self powered electronic cardiopulmonary resuscitation prompting system. . . ." This Reissue Patent Number Re.34,800 is a reissue of Hutchins' original Patent Number 4,583,524. Patent Numbers 4,583,524 and Re.34,800 can be found on over 300,000 CPR Prompting devices that have been marketed since 1984 and continue today as the standard of the industry.

8.) On June 22, 1999 Hutchins was issued U.S. Patent Number 5,913,685-titled "CPR Computer Aiding" attached herein as part of Exhibit C. The Patent ABSTRACT states in part, "a processing unit responsive to the information signals and for providing output signals representative of proper steps to be taken in resuscitating the victim . . ."

9.) Donald C. Hutchins registered CPR prompting software in the form of written instructions, program printouts and computer disk to the U.S. Copyright Office at the Library of Congress in 1986. The copyrighted software included logic, graphics and voice commands found in Hutchins' U.S. Patent Number 4,583,524 and Reissue Patent Number Re.34,800 "reduced to practice".

10.) On June 24, 1986 the United States Patent and Trademark Office registered the trademark "CPR PROMPT" in the name of Donald C. Hutchins attached herein as Exhibit D.

11.) In May of 2004 Hutchins realized that he had received no royalty payments or reports from The Complient Corporation ("Complient") since late summer in 2003. When he telephoned the Complient headquarters he learned that Complient had closed its operation.

12.) Hutchins was advised by the law office of Fish & Richardson that Complient had also failed to pay the most recent patent fees to Fish & Richardson as they had done on a regular basis since 1995. The accounts receivable department of Fish & Richardson determined that Complient was no longer in business and suggested that Hutchins pay the fees so the patents would not lapse. It was evident that Complient had abandoned the intellectual properties they had licensed from Hutchins as successor to County Line Limited and that the properties could be reclaimed by Hutchins.

13.) After learning that Complient was no longer in business, Hutchins made several efforts to contact Complient to reclaim his intellectual properties, marketing materials and tooling under terms of the June 1, 1994 License Agreement. There is no longer a listing for Complient in the Cleveland area and all notices from Hutchins to Complient management were left unanswered. At this point Hutchins had no recourse but to declare his

intellectual properties abandoned by the Jon Lindseth group, reclaim them as specified in the Agreement and discuss licensing these properties to the Zoll Corporation.

14.) On April 29, 2004 Hutchins received a phone call from Attorney Randall T. Skaar who stated that he was a patent attorney representing Cardiac Science, Inc. Attorney Skaar said that Mr. William Parker had filed a patent infringement against Cardiac Science that involved patents that Hutchins had licensed to Complient Corporation. He followed the telephone conversation with a letter he sent the next day herein attached as Exhibit E.

15.) Hutchins had received no notification from Complient about the acquisition by Cardiac Science and was told by his patent attorneys that Complient had abandoned his patents, trademarks, and copyrights. Hutchins learned that since November of 2003 Cardiac Science has been and continues to manufacture and sell products covered by Hutchins' patents and is using the CPR Prompt® trademark on goods that it markets. As a result Cardiac Science is infringing on these patents and trademark.

16.) Hutchins telephoned the Channing Bete Company/ Distributor of American Heart Association Products. The Channing Bete Company is a Massachusetts company headquartered at One Community Place, South Deerfield, MA 01373. Channing Bete confirmed that since November of 2003 the CPR Prompt® product line had been manufactured and marketed by the Cardiac Science company of Irvine, CA. as disclosed on a printout of their web site herein attached as Exhibit F.

17.) Attorney Skaar sent e-mail attachments to Hutchins herein attached as Exhibit G that showed that Cardiac Science expected to use Hutchins' Patent #5,913,685. Cardiac Science has no legal claim to this patent. Its use by Cardiac Science would also infringe on Hutchins'

properties. At the same time Attorney Skaar said that he knew of no patent attorney that had done due diligence on the Compliant/Cardiac Science acquisition.

18.) Searches on the Internet provided Hutchins with press releases, security analyst reports, and Security and Exchange Commission Forms 8-K and 10-K that conveyed terms of the acquisition. A report from Wedbush Securities contained herein as Exhibit H condenses terms of the acquisition with these words, "Last week (October 21, 2003) Cardiac Science announced the acquisition of privately-held Compliant Corporation for $47 million using 10.25 million shares of common stock."

19.) Hutchins developed and contracted with Texas Instruments, Inc. to manufacture the CPR Prompt® in the early 1980s. Realizing that he lacked the financial resources to bring a consumer model of the CPR Prompt® devise to market, Hutchins negotiated with a venture capitalist, Jon Lindseth, to license and develop a consumer version of CPR Prompt®.

20.) While Jon Lindseth operates a privately owned Cleveland company named Kindt-Collins, he became better known through his success with two ventures that he founded, the *Interplak* toothbrush and *Thermoscan* thermometer. *Interplak*, under the corporate name, Dental Research, sold to Bausch & Lomb in 1988 for $133 million dollars and *Thermoscan* to *Gillette* for an estimated $178 million dollars around 1993.

21.) Jon Lindseth suggested that he would start a new company and raise $14 million, as the minimum investment needed to bring CPR Prompt® to the consumer market. Jon's son, Steve Lindseth would manage this new venture that the Lindseths predicted could exceed the success Jon had experienced with *Interplak* and *Thermoscan*

22.) Negotiations with Steve Lindseth to license Hutchins' Patents for a consumer version of CPR Prompt® came to an impasse in February of 1994, because Steve wanted to pay a very low royalty percentage of 2%. A week after Hutchins ended negotiations, Jon and Steve called to re-open negotiations. Jon explained that the Lindseth's success with products like *Interplak* and *Thermoscan* came upon exiting the projects. Their plan would be to build a company around CPR Prompt®, develop the market and divest with an IPO or sale in about three years.

23.) While Jon Lindseth wanted to retain the low 2% royalty, he sweetened the deal by offering Hutchins and Hutchins' CPR Prompt Corporation 7-1/2% of the receipts when the venture was sold or went public as an IPO. If the new company had the same success as *Thermoscan* and *Interplak*, the share for the CPR Prompt Corporation and Hutchins could equal over $10 million. Jon said that this was the first time they had ever offered a patent owner participation in their exit strategy. He was willing to do the 7-1/2% deal if the royalty payments were low and the Lindseths took total control of the US and foreign patents and the "CPR Prompt®" trademark.

24.) Hutchins agreed to the 7-1/2% deal and Jon Lindseth communicated the terms to his attorney, Mark Kaufman of Southland, Asbill and Brennan of Atlanta, Georgia. On May 17, 1994, Attorney Kaufman sent a first draft of the Agreement to Attorney Gary Martinelli and Hutchins. This draft, attached herein as Exhibit I, correctly stated the terms that Jon Lindseth and Hutchins had negotiated earlier. Paragraph 3:10 states:

> **"3:10 LICENSEE will cause each shareholder of LICENSEE who purchases common stock of LICENSEE directly from LICENSEE to agree to pay to LICENSOR seven and one-half percent (7-1/2) of the net proceeds of any sale of any or all of such**

common stock to any person or entity which is not an Affiliate of such selling stockholder. . ."

25.) Section 3.10 was later changed in a subsequent draft to accommodate the fact that County Line Limited was a partnership that continued to include the bird feeder and Christmas tree product lines. It was understood that County Line would eventually divest itself from the bird feeder and Christmas tree stand products as separate companies and build a new entity around CPR Prompt®. The 7-1/2% exit strategy would apply to that new CPR Prompt® entity or continue to apply to County Line Limited and it successors if CPR Prompt® were not divested and remained with County Line Limited or its successors and affiliates.

26.) Section 3.10 was changed in the final draft of the Agreement signed June 1, 1994 to accommodate the fact that County Line Limited was a partnership that continued to include the bird feeder and Christmas tree product lines. Pending divestiture of the bird feeder and Christmas tree stand lines; Hutchins agreed to allow the Patents to be held in a separate entity. When the divestiture occurred and CPR Prompt LLC succeeded County Line, the License Agreement would be held by and the 7-1/2% applied to the shareholders of CPR Prompt LLC. When the Complient Corporation succeeded CPR Prompt LLC the same terms and exit strategy would apply to the new shareholders because all these companies were affiliates.

27.) In 1995 Hutchins developed the consumer CPR 100 under contract to County Line Limited. This model was marketed by County Line and the instruction and warrantee book carried the CPR Prompt Trademark, copyrights and the U.S., Canadian and European patents owned by Hutchins as herein attached as Exhibit J.

28.) In September of 1994, Attorney Scott Wilson of Calfee, Halter and Griswold of Cleveland, Ohio sent a

License Agreement to Attorney Martinelli requesting Hutchins' signature both as patent owner and as President of the CPR Prompt Corporation. Recognizing that this License Agreement was a fabrication that completely distorted the intention of section 3:10 and the 7-1/2% exit distribution formula, Attorney Martinelli advised against Hutchins signing or recognizing this Agreement. Hutchins never signed or accepted the validity of the Agreement dated September 19, 1994.

29.) CPR Prompt LLC succeeded County Line Limited after County Line Limited divested itself of the Christmas tree and bird feeder product lines. At that point, all the products marketed by CPR Prompt Limited carried the CPR Prompt logo. CPR Prompt LLC submitted the quarterly reports to Hutchins and paid the quarterly royalty payments under terms of the License Agreement signed June 1, 1994. The original shareholders of County Line Limited continued to participate as shareholders of CPR Prompt LLC.

30.) CPR Prompt LLC was succeeded by the Complient Corporation. The Complient Corporation continued to assume the responsibilities for royalty payments and quarterly reports to Hutchins (dba CPR Prompt Corporation) as per Exhibit K.

31.) Using Hutchins' trademark, patents, copyrights and trade secrets as the primary asset, the Jon Lindseth group raised over $54 million in venture capital in various stages through the succession of County Line Limited, CPR Prompt LLC and Complient Corporation.

32.) Using Hutchins' trademark, patents, copyrights and trade secrets as the primary asset, the Jon Lindseth group in October 2003 was able to sell these assets to Cardiac Science for a reported $47 million.

33.) The $54 million in venture capital plus the $47 million from Cardiac Science produced over $100 million

for the Jon Lindseth group. The trademark, patents, copyrights and trade secrets that he placed in the hands of the Jon Lindseth group, has returned nothing to Hutchins.

34.) On June 5, 2004 Hutchins sent a letter to Cardiac Science's representative, Attorney Randall Skaar, to inform Cardiac Science of the infringement, negligence and breach of contract violations. This effort by Hutchins to resolve these issues has received no response from Cardiac Science or Attorney Skaar.

35.) These allegations are testified to and supported by an affidavit by Donald C. Hutchins included herein as Exhibit L.

Count I

(Copyright Infringement)

36.) Hutchins adopts by reference the allegations of paragraphs 1 through 35.

37.) The software design of the CPR Prompt® currently being sold by the Cardiac Science, Inc. through Channing Bete and other distributors violates the Copyright Act of 1976 with the use of a series of images and voice commands originally created as algorithms used for CPR Prompting software copyrighted by Hutchins.

38.) Such terms as "Are you OK" and "Call for help" and graphic instructions depicting proper compressions, opening of airways, chin lifts and breathing are identical to the series of images created by Hutchins in his copyrighted material.

39.) Cardiac Science has used Hutchins' copyrighted expression in the CPR Prompt® units that they are currently distributing in violation of the Copyright Act of 1976. Cardiac Science engineers knew of Hutchins' speech and graphic CPR prompting software because this software has controlled over 300,000 *CPR Prompt*® units that have

been sold in the past 18 years.

Count II

(Patent Infringement by Means of Sales)

40.) Hutchins adopts by reference the allegations of paragraphs 1 through 39.

41.) Cardiac Science has not licensed or sub-licensed any intellectual properties from Hutchins.

42.) Hutchins has not agreed to any transfer of his intellectual properties to Cardiac Science by Complient or any other licensee of Hutchins' intellectual properties.

43.) Cardiac Science has infringed Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 of Patent RE 34,800 through the illegal sale of CPR Prompt® units not authorized by Hutchins as patent owner.

Count III

(Patent Infringement by Means of Manufacture)

44.) Hutchins adopts by reference the allegations of paragraphs 1 through 43.

45.) Cardiac Science has infringed Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 of Patent RE 34,800 through the illegal manufacture of CPR Prompt® units not authorized by Hutchins as patent owner.

Count IV

(Negligence)

46.) Hutchins adopts by reference the allegations of paragraphs 1 through 45.

47.) Cardiac Science as a publicly traded company under rules of the SEC owed a duty to its shareholders, the Complient Corporation and Hutchins to perform sufficient due diligence to know and understand the assets being acquired from the Complient Corporation.

48.) Cardiac Science was negligent in not performing sufficient due diligence when evaluating the License Agreement dated June 1, 1994 between Hutchins and County Line Limited. Cardiac Science had a duty to

Hutchins to understand that Complient should communicate terms of the acquisition to Hutchins and to demand of Complient that such action be accomplished before completing the asset acquisition.

49.) Cardiac Science was negligent not performing sufficient due diligence in reading and understanding the License Agreement dated June 1, 1994 between Hutchins and County Line Limited to understand that Hutchins was due 7-1/2 % of the proceeds of the sale to Cardiac Science.

50.) By completing the acquisition with no understanding of the terms of the License Agreement dated June 1, 1994, Cardiac Science has caused great financial damage to Hutchins. Hutchins can recover in part from these damages if Cardiac Science meets the terms of the License Agreement that they have acquired from Complient and for which they are now responsible.

51.) When the payment of the $47,000,000 acquisition cost is paid Cardiac Science to Complient stockholders it will be impossible for Hutchins to chase down every one of these stockholders to recover his 7-1/2 % share from each of them. Therefore it is incumbent upon Cardiac Science to retain sufficient funds from the stock transfer trust account to pay Hutchins this 7-1/2%. If this trust account is depleted, the Cardiac Science management must search-out each Complient stockholder in the future to reclaim the funds owed to Hutchins.

Count V

(Negligence)

52.) Hutchins adopts by reference the allegations of paragraphs 1 through 51.

53.) Cardiac Science was negligent not performing sufficient due diligence in reading and understanding a License Agreement dated September 19, 1994. It is self-evident that this September 19, 1994 License Agreement, as found in the SEC 8K Report, does not bear Hutchins'

signature and is not valid as it relates to Hutchins' intellectual properties..

54.) Cardiac Science relied on this document when attempting to acquire Hutchins' intellectual properties from Complient. Cardiac Science was misled by Complient into believing the License Agreement dated September 19, 1994 and referenced in the SEC 8K filing is legitimate. However, the negligence of Cardiac Science in not practicing even a minimum standard of due diligence while inspecting this document has led to this debacle that is causing extensive financial damage to Hutchins.

Count VI

(Breach of Contract)

55.) Hutchins adopts by reference the allegations of paragraphs 1 through 54.

56.) Should the Court accept the unfounded position, that Cardiac Science is the successor to Complient in terms of the License Agreement dated June 1, 1994; the Court should understand that Cardiac Science has not met and is not meeting the terms of that contract.

57.) Cardiac Science has not met the terms of the License Agreement dated June 1, 1994 with regard to royalty payments, minimum yearly payments, and quarterly reports to Hutchins.

58.) Cardiac Science has failed to pay patent fees to Fish & Richardson as Complient and its predecessors have done since 1995. Hutchins has been forced to accept this burden to prevent having the patents lapse.

59.) As the successor to Complient, Cardiac Science is responsible for guaranteeing that the terms of the Agreement are being met. In the event of a sale of the License to a party not related to the Jon Lindseth group, the Agreement states that Hutchins will receive 7-1/2 % of proceeds from the sale from each individual stockholder. This obligation could easily be met by Cardiac Science by

diverting 7-1/2% of the stock that they are transferring to the Complient Corporation, to Hutchins. It is the responsibility of Cardiac Science as the successor to County Line/CPR Prompt LLC and Complient to fulfill this obligation.

WHEREFORE, (Hutchins) prays that judgment be entered in his favor as follows:

(a) On Count I, that a judgment be entered against the Defendant in the sum of $120,000 plus interest and costs as fixed by the Court and that the Defendant be ordered to cease any further infringement of Hutchins' Copyright.

(b) On Count II, that a judgment be entered against the Defendant in the sum of $150,000 plus interest and costs as fixed by the Court and that the Defendant be ordered to cease any further infringement of Hutchins' Patents RE 34,800 and 5,913,685.

(c) On Count III, that a judgment be entered against the Defendant in the sum of $150,000 plus interest and costs as fixed by the Court and that the Defendant be ordered to cease any further infringement of Hutchins Patents RE 34,800 and 5,913,685.

(d) On Count IV, that a judgment be entered against the Defendant for damages in the sum of $3,525,000 plus interest and costs as fixed by the Court. This figure represents 7-1/2% of the proceeds of the sale to Cardiac Science.

(e) On Count V, that a judgment be entered against the Defendant for damages in the sum of $3,525,000 plus interest and costs as fixed by the Court. This figure represents a

7-1/2% of the proceeds of the sale to Cardiac Science.

(f) On Count VI, that a judgment be entered against the Defendant recognizing that Cardiac Science has no right to Hutchins' intellectual properties that Hutchins has reclaimed from County Line Limited and its successors as parties to the Agreement with Hutchins dated June 1, 1994.

(g) On Count VI, should the Court accept the position that Cardiac Science is the successor to Complient in terms of the License Agreement dated June 1, 1994, that judgement be entered that Cardiac Science divert 7-1/2% of the stock that they are transferring as payment to the Complient Corporation, to Hutchins.

(h) The infringements, negligence and breach of contract was willful on the part of the Defendant and continued after notification by Hutchins and without any belief by Cardiac Science that Hutchins' Patents #4,583,524, #Re34,800 and #5,913,685 were not valid. That Cardiac Science contemptuously infringed on Hutchins' intellectual properties with the mistaken belief that Hutchins, as "the little guy," could not afford the legal costs to protect these properties through the federal court system. On any and all Counts that a judgment be entered against the Defendant to increase damages up to three times the damages assessed in accordance Title 35 United States Code, Section 285.

60.) Demand for Trial by Jury.

The Plaintiff, DONALD C. HUTCHINS, Pro Se

1047 Longmeadow Street
Longmeadow, Massachusetts 01106
(413) 567-0606
(413) 739-4060 (facsimile)

Dated: July 2, 2004

CERTIFICATE OF SERVICE

I, Richard J. Moriarty, 43 Greenacre Avenue, Longmeadow, Massachusetts 01106, hereby certify that I served a copy of the foregoing on the appropriate party by sending a copy by registered mail to: Cardiac Science, Inc., 1900 Main Street, Suite 700, Irvine, CA 92614, Attn: Mr. Raymond W. Cohen, Chief Executive Officer.

Dated: July 2, 2004

Richard J. Moriarty

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

COMPLIENT CORPORATION 4675 Richmond Road Warrensville Heights, Ohio 44128 Plaintiff, v. DONALD C. HUTCHINS 1047 Longmeadow Street Longmeadow, Massachusetts 01106 and CPR PROMPT CORPORATION 1047 Longmeadow Street Longmeadow, Massachusetts 01106 Defendants	CASE NO: CV04540066 Judge: Eileen Gallagher **COMPLAINT**

Plaintiff, Complient Corporation ("Complient"), for its Complaint against Defendants, Donald C. Hutchins ("Hutchins") and CPR Prompt Corporation ("CPR Prompt") (collectively "Defendants"), states as follows:

1. On or about June 1, 1994, Defendants entered into a License Agreement with County Line Limited Partnership ("County Line"). County Line, in keeping with the terms of the License Agreement, subsequently transferred its interests in the License Agreement to an Affiliate of County Line, CPR L.P. As explained below, in time, Complient became the general partner of CPR L.P. A copy of the License Agreement is attached hereto as Exhibit A.

2. Section 3.10 of the License Agreement, among other things, entitles Defendants to 7.5% of the net proceeds of the sale of the partnership interests in CPR L.P. to a third party if and when such a sale occurs. To date, no such sale has occurred. Nonetheless, Defendants have

repeatedly and incorrectly claimed that such a sale has occurred, have repeatedly and wrongfully attempted to terminate the License Agreement and, significantly, have repeatedly instituted frivolous and vexatious litigation in an effort to extort the payment contemplated by Section 3.10 of the License Agreement from Complient. The correct interpretation of section 3.10 of the License Agreement was previously litigated before this Court wherein Defendants' untenable interpretation of this provision was rejected and judgment was entered against them.

3. In June of 2004, Hutchins, once again, instituted a frivolous and unfounded litigation in the United States District Court for the District of Massachusetts (the "Massachusetts District Court") wherein Hutchins claims entitlement to the 7.5% payment contemplated by Section 3.10 of the License Agreement, despite the fact that he is admittedly aware no such payment is due and despite the prior judgment against him. The subject Complaint is occasioned by this abusive and tortious conduct by Hutchins for which Complient is entitled to relief.

4. Complient stands to incur extensive economic damage as a result of Defendants' wrongful conduct. Specifically, as a result of Hutchins' baseless claims, Complient may be prevented from redeeming certain shares of common stock of Cardiac Science to which, as explained below, Complient is entitled by contract. A delay in Complient's ability to redeem this stock may result in significant economic damages due to the possibility of a decline in the stock's value.

PARTIES, JURISDICTION AND VENUE

5. Complient is a Delaware corporation with its principal place of business located in Warrensville Heights, Ohio.

6. Donald C. Hutchins is an individual residing in Longmeadow, Massachusetts.

7. CPR Prompt Corporation is a Massachusetts corporation with its principal place of business in Longmeadow, Massachusetts. Hutchins is the President and Treasurer of CPR Prompt.

8. Defendants are subject to the long-arm jurisdiction of this Court pursuant to Rule 4.6 of the Ohio Rules of Civil Procedure by virtue of their activities associated with the License Agreement. Further, a substantial part of the events giving rise to this action occurred in this County.

BACKGROUND

The License Agreement

9. Pursuant to the License Agreement, Defendants granted County Line an exclusive license to a product known as CPR Prompt, a device used to provide rescue aid instructions to trained individuals concerning cardiopulmonary resuscitation, which device is claimed in U.S. Patent Reexamination No. 34,800.

10. As consideration for the License, Defendants were entitled to, among other things, the following under the License Agreement: (a) an initial payment of $100,000; (b) advance royalty payments of $4,000 per month during each of the first twelve months of the License Agreement, with such advance payments to be deducted from future royalties; (c) royalty payments of 5% of the sales of the professional

version of the product during the first twelve months of sales and 3.5% of same thereafter; (d) royalty payments of 2% of the net sales of the consumer version of the product; and (e) in the event a partner of the Affiliate, i.e. CPR L.P., sells all or part of its partnership interest to an unrelated third-party, 7.5% of the net proceeds of such sale.

11. The parties to the License Agreement mutually agreed that, after the date of the Agreement, County Line would assign its interest in the License Agreement to an Affiliate of County Line. Thus, on September 19, 1994, County Line, in accordance with its obligations under Section 3.10 of the License Agreement, assigned the License Agreement to CPR LP., an Affiliate of County Line as defined by Section 1.1 of the License Agreement . At all times since September 19, 1994, CPR L.P. has been the Affiliate contemplated by the License Agreement. CPR L.P. is an Ohio limited partnership formed in September of 1994.

12. Between September of 1994 and December of 1997, County Line or its successor served as the general partner of CPR L.P. holding 99% of the partnership interest therein. In December, 1997, County Line's successor transferred its 99% partnership interest in CPR L.P. to CPR Prompt L.L.C. On June 20, 2000, CPR Prompt L.L.C. converted to a Delaware corporation named Complient Corporation. As such, thereafter, Complient held the 99% general partnership interest in CPR L.P.

Defendants Attempt to Rewrite the License Agreement

13. In November of 1999, Defendants attempted improperly to terminate the License Agreement by issuing a "Notice of Termination" and a "Final Notice of Termination" (the "Notices"). In the Notices, Defendants erroneously claimed that Section 3.10 of the License Agreement had been breached. Complient, on behalf of CPR L.P. and County Line, responded to the Notices, advised that no breach of

Section 3.10 of the License Agreement had, in fact, occurred, and advised that CPR L.P.., County Line and Complient deemed the License Agreement to be in full force and effect.

14. Then, in January of 2001, Defendants sent correspondence to Complient setting forth an interpretation of Section 3.10 of the License Agreement that was directly contrary to its express terms and the intent of the parties. As a result, on February 2, 2001 Complient filed a Complaint for Declaratory Judgment in the Cuyahoga County Court of Common Pleas against Hutchins and CPR Prompt to protect the interests of CPR L.P. and those of its associated entities under the License Agreement, which, was designated as Case Number 429394 and is hereinafter referred to as "Complient c. CPR Prompt."

Defendants' Efforts to Extract Payments Under the License Agreement They Are Not Entitled To Are Rejected by the Courts

15. On May 30, 2001, the Court, in Complient v. CPR Prompt, after extensive briefing and oral argument, entered a default judgment against CPR Prompt and in Complient's favor that Section 3.10 of the License Agreement entitles Defendants to 7.5% of the net proceeds of the sale to an unrelated third party of the partnership interests in CPR L.P. – not to 7,5% of the net proceeds of the sale of Complient (as Defendants have repeatedly claimed). Summary judgment was entered against Hutchins by the Complient v. CPR Prompt Court on the same basis on September 5, 2001.

16. On June 27, 2001, less than a month after the default was entered against CPR Prompt, Hutchins, clearly dissatisfied with the outcome of Complient v. CPR Prompt, filed a Complaint in the Massachusetts District Court,

alleging RICO violations against certain shareholders of Complient, which case was captioned Hutchins v. Lindseth, Case No. 3:01-CV- 30120. The Complient shareholders moved to dismiss Hutchins' RICO claims on the grounds of, among others, failure to state a RICO claim, lack of personal jurisdiction and *res judicata* .

17. On December 17, 2001, after extensive briefing and oral argument, the Massachusetts District Court dismissed Hutchins' RICO action for lack of personal jurisdiction. The dismissal of Hutchins' RICO action was affirmed, without oral argument, by the First Circuit on August 12, 2002.

18. Concomitant with the filing of Complient v. CPR Prompt, CPR L.P. filed a parallel action before the American Arbitration Association ("AAA") on February 5, 2001, pursuant to the terms of the License Agreement. On August 14, 2002, given the resolution of Complient v. CPR Prompt, and Hutchins' steadfast and improper refusal to compensate the AAA arbitrators for their fees and/or appear in the AAA proceeding, CPR L.P. determined not to advance Hutchins' share of the fees associated with the AAA arbitration, and the AAA dismissed the action without prejudice.

19. Then, Hutchins, on July 18, 2003, sued the AAA in the Massachusetts District Court for allegedly interfering with his patent rights by presiding over the action filed by CPR L.P. and for seeking payment of his share of the arbitration costs incurred by the AAA. The Massachusetts District Court dismissed Hutchins' Complaint against the AAA, which dismissal Hutchins appealed to the United States Court of Appeals for the First Circuit. That appeal is pending.

The Asset Purchase Agreement

20. On October 21, 2003, certain assets of Complient were purchased by Cardiac Science, Inc., a Delaware corporation, pursuant to an Asset Purchase Agreement ("APA") executed by and among Complient, Cardiac Science, and CPR L.P. A copy of the APA, exclusive of its schedules, is attached hereto as Exhibit B.

21. Pursuant to the terms of the APA, Cardiac Science purchased all of the assets of Complient and CPR L.P.; except for those specifically retained by Complient and CPR L.P. The assets retained by Complient and CPR L.P. are specified in Section 1.2 of the APA and are specifically referred to as the "Retained Assets."

22. The partnership interests in CPR L.P. are one of the Retained Assets specified in the APA. As a result, the partnership interests in CPR L.P. have not, to date, been sold to an unrelated third party.

23. Further, pursuant to Section 1.2(i) of the APA, Complient retained the obligation to satisfy any payment obligations that may become due under Section 3.10 of the License Agreement related to any sale of the partnership interests in CPR L.P.. Cardiac Science assumed all other obligations under the License Agreement, which obligations have been fully satisfied.

24. In exchange for the assets of Complient and CPR L.P., other than the Retained Assets, Cardiac Science agreed to transfer a specified amount of shares of Cardiac Science common stock to Complient. A portion of the total amount of Cardiac Science common stock to be transferred to Complient as consideration for the purchased assets of Complient was withheld for a period of one year from the date of sale—October 21, 2004—pending any potential claims for indemnity.

25. Pursuant to the Indemnification provisions of the APA, the shares of Cardiac Science common stock held in escrow will be transferred to Complient on October 21, 2004, so long as no claims for indemnification are pending against Complient and/or so long as the shares held in escrow are not subject to reduction as a result of any then-known indemnification obligations of Complient. If an indemnification claim was made and/or is pending against Complient as of October 21, 2004 as contemplated by the APA, the amount of shares to be transferred to Complient is subject to be reduced accordingly and pursuant to the terms of the APA.

Hutchins files suit against Cardiac Science

26. On July 2, 2004, Hutchins filed suit against Cardiac Science in the Massachusetts District Court, which action is captioned Hutchins v. Cardiac Science, Case No. 3:04-CV-30126. In this Complaint, Hutchins claims that Cardiac Science is liable for copyright infringement, patent infringement by means of sale, patent infringement by means of manufacture, negligence and breach of contract. A copy of this Complaint, exclusive of its exhibits, is attached as Exhibit C.

27. Hutchins is admittedly aware of the terms of the APA - - a fact he expressly admits in the Hutchins v. Cardiac Science Complaint in paragraph 18. On August 18, 2004, Hutchins filed an " *Ex Parte* Emergency Motion for Temporary Restraining order" in the Massachusetts District Court, seeking to suspend the transfer of shares of Cardiac Science common stock to Complient pending resolution of the Hutchins v. Cardiac Science Complaint. As a result, Hutchins is clearly aware that, by filing that Complaint, he is, at least, delaying and, possibly, preventing transfer to Complient of the shares of Cardiac Science common stock held in escrow.

28. Hutchins claims, in his Complaint against Cardiac Science, that he gave notice to Complient, under the License Agreement, of his intent to reclaim the intellectual properties covered thereby. Hutchins further alleged that Complient abandoned theses intellectual properties and, essentially, according to Hutchins, terminated the License Agreement.

29. Section 8.2 of the License Agreement requires that a party to the License Agreement may terminate the License Agreement prior to expiration of its term only in the event of a material breach by the other party and only upon written notice to the other party. CPR L.P. has not received notice, written or otherwise, from Defendants of a material breach of the License Agreement at any time subsequent to the Notices received in November of 1999, which Notices were nullified.

30. Further, Hutchins claims at paragraph 26 of his Complaint against Cardiac Science that Defendants are entitled to 7.5% of Complient upon its "divesiture." Hutchins further alleged at, *inter alia,* paragraph 49 of his Complaint against Cardiac Science that he is entitled to 7.5% of the proceeds to Complient of the APA among Cardiac Science, Complient and CPR L.P.

31. On July 28, 2004, Cardiac Science issued a demand for indemnity to Complient based on the Complaint filed in Hutchins v. Cardiac Science citing Sections 1.2 and 2.2 of the APA.

COUNT I

32. Complient repeats and reveres paragraphs 1 through 31 hereof as if fully rewritten herein.

33. Pursuant to Hutchins' express admissions in the Complaint filed in Hutchins v. Cardiac Science and his "*Ex Parte* Emergency Motion for Temporary Restraining Order," Hutchins is aware of the existence and terms of the APA among Cardiac Science, Complient and CPR L.P.

34. Due to his knowledge of the terms of the APA, Hutchins is aware that Cardiac Science did not purchase Complient's partnership interests in CPR L.P. Further, based on the express terms of the License Agreement and the declaratory judgment entered against Defendants in Complient v. CPR Prompt, Hutchins is aware that only a sale of the partnership interests in CPR L.P. will trigger the requirement of Section 3.10 of the License Agreement to pay Defendants 7.5% of the value of the net proceeds of the sale to a third party of the partnership interests in CPR L.P.

35. Hutchins is further aware, by virtue of the declaratory judgment entered in Complient v. CPR Prompt and the express terms of the License Agreement, that Defendants are not, pursuant to Section 3.10 of the License Agreement or otherwise, entitled to 7.5% of the net proceeds of the sale of Complient.

36. By virtue of Hutchins' filing of the Complaint in Hutchins v. Cardiac Science, Hutchins intentionally seeks to delay and or prevent the transfer of the shares of Cardiac Science common stock from escrow for the benefit of Complient pursuant to Section 3.1 of the APA.

37. Hutchins' efforts to delay or prevent the transfer of the Cardiac Science common stock from escrow to Complient are without justification because Hutchins is aware that the partnership interests in CPR L.P. were not sold to Cardiac Science and, further, that in no event is he entitled to 7.5% of the net proceeds of a sale of Complient.

38. As a result, Hutchins' conduct in filing the Complaint in Hutchins v. Cardiac Science constitutes a tortious interference with the APA among Complient, Cardiac Science and CPR L.P., for which Hutchins is liable for compensatory and punitive damages in an amount to be determined at trial but which amount is in excess of $25,000.

COUNT II

39. Complient repeats and reveres paragraphs 1 through 38 hereof as if fully rewritten herein.

40. On July 2, 2004, Hutchins filed a Complaint in the Massachusetts District Court captioned Hutchins v. Cardiac Science, Case No. 3:04-CV-030126. A copy of this Complaint is attached hereto as Exhibit C.

41. On July 28, 2004, Cardiac Science issued a demand for indemnity to Complient pursuant to the terms of the APA entered into by and among Cardiac Science, Complient and CPR L.P. on October 21, 2003.

42. As Hutchins admits in paragraph 18 of the Complaint filed in Hutchins v. Cardiac Science, and as evidenced by the arguments made and relief sought by Hutchins in his Motion for Temporary Restraining Order filed therein, Hutchins is aware of the terms of the APA and is seeking to prevent the transfer of shares of Cardiac Science common stock to Complient under the APA.

43. Pursuant to the APA, certain shares of Cardiac Science common stock which constitute part of the consideration tendered to Complient under the APA are held in escrow until October 21, 2004. The shares of Cardiac Science common stock held in escrow will only be transferred to Complient if no claims for indemnity by Cardiac Science are pending on or before and/or as of October 21, 2004.

44. Hutchins' Complaint against Cardiac Science seeks damages of, among other things, diversion to him of 7.5% of the stock of Cardiac Science that is being transferred to Compliant as payment under the APA and/or $3,525,000, which, according to Hutchins, constitutes the value of 7.5% OF Compliant.

45. Hutchins, by virtue of the outcome of Compliant v. CPR Prompt and the express terms of the License Agreement, is aware that Defendants are not entitled to 7.5% of the value of Compliant upon its sale under any circumstances but, rather, that, under the terms of the License Agreement, Defendants are entitled to only 7.5% of the sale to a third party of the partnership interests in CPR L.P.

46. Hutchins has knowledge that the partnership interests in CPR L.P. - - Compliant's 99% general partnership interest or otherwise - - were not sold to Cardiac Science or any entity.

47. Hutchins is further aware that, by virtue of filing the Complaint in Hutchins v. Cardiac Science, a claim for indemnity under the APA against Compliant arose and that, pending the resolution of at least some of his claims against Cardiac Science, the Cardiac Science common stock held in escrow will or may not be transferred to Compliant.

48. Hutchins filed the Complaint against Cardiac Science with the ulterior purpose and motive of extorting a payment from Compliant under Section 3.10 of the License Agreement – a payment that is not due and owed to Defendants.

49. As a result of Hutchins' wrongful and illegitimate filing of his Complaint against Cardiac Science in the Massachusetts District Court, Compliant has and will suffer compensatory and punitive damages in an amount to be determined at trial but which amount is in excess of

$25,000 and includes, but is not limited to, any decline in the value of the shares of Cardiac Science common stock from October 21, 2004 to the date the stock is transferred to Complient as well as any and all attorney fees and costs incurred by Complient related to Cardiac Science's demand for indemnity.

COUNT III

50. Complient repeats and reveres paragraphs 1 through 49 hereof as if fully rewritten herein.

51. As fully explained above, as the plain language of Section 3.10 of the License Agreement provides (a copy of which is attached hereto as Exhibit A) and as the Cuyahoga County Court of Common Pleas held in its declaratory judgment entered against Defendants in Complient v. CPR Prompt, in the event the partners of CPR L.P. sell all or part of their respective partnership interests in CPR L.P. to an unrelated third party, Hutchins is entitled to 7.5% of the net proceeds of the sale of such partnership interests

52. Further, the plain language of Section 8.2 of the License Agreement provides that in order to effectively terminate the License Agreement prior to the expiration of its term, Defendants are required to provide written notice to CPR L.P. of a material breach. Upon such written notice, CPR L.P. is afforded at least 90 days to cure any breach.

53. To date, CPR L.P. has not received the written notice required by Section 8.2 of the License Agreement.

54. Despite the plain language of Section 3.10 of the License Agreement and, moreover, despite the declaratory judgment previously entered against them, Defendants continue to dispute the effect of Section 3.10 of the License Agreement and incorrectly contend that they

are entitled to 7.5% of the sale of any or all assets of Complient.

55. Further, Defendants claim that 7.5% payment provision of Section 3.10 of the License Agreement was somehow triggered by virtue of the APA among Complient, CPR L.P. and Cardiac Science.

56. The plain language of the APA (a copy of which is attached hereto as Exhibit B), specifically section 1.2(i) thereof, expressly provides that the partnership interests in CPR L.P. were not sold to Cardiac Science in October of 2003 as Defendants now claim.

57. In order to give effect to the plain language of the License Agreement, the APA and the prior order of this Court, the Court enter a judgment declaring that: (a) neither Defendant has effectively terminated the License Agreement; (b) the partnership interests in CPR L.P. were not sold to Cardiac Science in October of 2003 as Defendants now contend; and (c) the 7.5% payment provision of Section 3.10 of the License Agreement was not triggered by virtue of the APA among Complient, CPR L.P. and Cardiac Science.

58. An actual and justifiable controversy exists between Complient and the Defendants with respect to the construction and effect of Section 3.10 of the License Agreement and Section 1.2(i) of the APA for which declaratory relief is necessary.

59. A declaration is therefore necessary and appropriate under these circumstances in order that Complient may ascertain the construction and effect of both Section 3.10 of the License Agreement and Section 1.2 (i) of the APA.

WHEREFORE, Complient prays that judgment be entered in its favor as follows:

(i) On Count I of the Complaint, judgment in Complient's favor for compensatory and punitive damages

against Donald Hutchins in an amount in excess of $25,000 to be determined at trial;

(ii) On Count II of the Complaint, judgment in Complient's favor for compensatory and punitive damages against Donald Hutchins in an amount in excess of $ 25,000 to be determined at trial;

(iii) On Count III of the Complaint a declaratory judgment against Donald Hutchins and CPR Prompt Corporation declaring that Defendants have not effectively terminated the License Agreement;

(iv.) On Count III of the Complaint, a declaratory judgment against Donald Hutchins and CPR Prompt Corporation declaring that the partnership interests in CPR L.P. were not sold to Cardiac Science by virtue of the APA;

(v) On Count III of the Complaint, a declaratory judgment against Donald Hutchins and CPR Prompt Corporation declaring that the 7.5% payment provision of Section 3.10 of the License Agreement was not triggered by virtue of the APA among Complient, CPR L.P. and Cardiac Science; and interest, costs, attorneys fees and such other and further relief as the Court deems equitable and just.

WILLIAM E. COUGHLIN (0010874)
COLLEEN MORAN O'NEIL (0066576)
CALFEE, HALTER & GRISWOLD LLP
800 Superior Avenue
Cleveland, Ohio 44114
(216) 622-8200
Attorneys for Plaintiff,
Complient Corporation

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

COMPLIENT CORPORATION	)	
4675 Richmond Road	)	
Warrensville Heights, Ohio 44128	)	Case No:
Plaintiff,	)	CV04540066
v.	)	
DONALD C. HUTCHINS	)	Judge
1047 Longmeadow Street	)	Eileen Gallagher
Longmeadow, Massachusetts 01106	)	
and	)	
CPR PROMPT CORPORATION	)	
1047 Longmeadow Street	)	
Longmeadow, Massachusetts 01106	)	
Defendants	)	

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO DISMISS UNDER FED.R.CIV.P.12(b)(1), P.12(b)(2) and P.12(b)(6)

INTRODUCTION

Defendant Donald C. Hutchins ("Hutchins") seeks dismissal of the claims in Plaintiff's Complaint pursuant to Fed. R. Civ. P.12(b)(6), failure to state a claim upon which relief can be granted, because many of the claims are ultimately subject to a mandatory and binding arbitration clause. However, even without the consideration of arbitration, the Plaintiff has not pled sufficient material facts to sustain any claim for relief under the identified legal theories.

Plaintiff's complaint must be dismissed for lack of subject matter jurisdiction under Federal Rule 12(b)(1), lack of jurisdiction, because the agreement cited by the

Plaintiff is subject to arbitration and the patents cited are subject to federal jurisdiction.
Plaintiff's complaint must be dismissed for reasons under Federal Rule 12(b)(2), lack of jurisdiction over the person. The Complient sale to the Cardiac Science Corporation involved a $54 million doilar transaction. It is clear that the damages claimed by the Plaintiff exceed the federal financial limit placed on litigation between citizens of different states.

FACTUAL BACKGROUND

Complient is a Delaware corporation in the process of being dissolved after completion of an asset sale to the Cardiac Science Corporation ("Cardiac Science"). In October of 2003 Complient released its employees, sold its assets and vacated its principle place of business that was located in Solon, Ohio. Complient Corporation currently can not be found in Ohio business directories and uses the law offices of Calfee, Halter & Griswold, LLP. Donald C. Hutchins ("Hutchins") is an individual residing in Longmeadow, Massachusetts.
The License Agreement dated June 1, 1994, that accompanied the Complaint, as Plaintiff's Exhibit A, states in Section 9.4 that any disputes under the Agreement shall be submitted to and settled by arbitration in accordance with the then prevailing arbitration rules of the American Arbitration Association. Section 9.4 of the License Agreement governs jurisdiction and venue. Cuyahoga County Court of Common Pleas does not have jurisdiction to resolve the issues stated in the Complaint under the terms of License Agreement dated June 1, 1994.

On February 12, 2001 Judge Matia awarded Complient a Declaratory Judgment in Case No. 429394 in

the Court of Common Please of Cuyahoga County, Ohio. This Judgment, attached herein as Exhibit #1, ruled that Complient was not a party to the License Agreement dated June 1, 1994 and therefore had no ownership or claim to Hutchins' intellectual properties described in the License Agreement. Complient has no ownership interest in Hutchins' intellectual properties, the sale of these intellectual properties by Complient to Cardiac Science in October of 2003 was an illegal transfer of assets.

Because the transfer of Hutchins patents to Cardiac Science was an illegal transfer, Cardiac Science has no legal claim on this patent and therefore is infringing by the manufacture and sale of products carrying this patent. Federal Courts have exclusive subject matter jurisdiction in lawsuits involving copyright and patent infringement and this infringement is currently being adjudicated in the Federal District Court of Massachusetts, Case No. 04-30126-MAP.

The Plaintiff has referenced to Federal Case No. 04-30126-MAP in its Complaint and included it as Exhibit C. Case No. 04-30126-MAP preceded this action and addresses the same issues as this Complaint filed in Ohio. The Complient Corporation has been enjoined in this federal case. To have parallel issues adjudicated in Ohio would result in needless duplicated effort and eventually to *res judicata*.

ARGUMENT

I. PLANTIFF'S CLAIMS SHOULD BE DISMISSED UNDER FED.R.CIV.P.12(b)(6) BECAUSE PLAINTIFF HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

A claim may be dismissed under Rule 12(b)(6) if Plaintiff fails to allege sufficient facts to support a cognizable legal claim. SmileCare Dental Group v. Delta Dental Plan of Cal. Inc., 99 F.3d 780,783 (9th Cir.1996). Under Rule 12(b)(6) all allegations in the complaint are to be treated as true and all reasonable inferences therefrom drawn in favor of the plaintiff. Rumford Pharmacy, Inc. v. City of East Providence, 970 F.2d996,997 (1st Cir.1992). "[A[plaintiff... is nonetheless required to set forth factual allegations, either direct or inferential, *respecting each material element necessary to sustain recovery under some actionable legal theory.*" Id. at 998 (emphasis original). "The pleading requirements, though minimal,' are not non-existent". Id.

II. COUNTS I, II, AND III SHOULD BE DISMISSED UNDER 12(b)(1) BECAUSE THIS COURT LACKS JURISDICTION TO ADJUDICATE WHETHER THERE HAS BEEN A BREACH OF THE JUNE 1, 1994 LICENSE AGREEMENT.

All disputes under the June 1, 1994 license agreement must be submitted to and settled by arbitration pursuant to ¶ 9.4 of the agreement. Because arbitration is mandatory and binding, this Court lacks subject matter jurisdiction to decide breach issues. This court should therefore dismiss these claims pending an arbitrator's decision.

Federal Courts have exclusive subject matter jurisdiction in lawsuits involving copyright and patent infringement and this infringement is currently being adjudicated in the Federal District Court of Massachusetts, Case No. 04-30126-MAP

III PLANTIFF'S CLAIMS SHOULD BE DISMISSED UNDERFED.R.CIV.P.12BECAUSE THIS COURT LACKS JURISDICTION OVER THE PERSONS.

Complient is a Delaware corporation that vacated its principle place of business that was located in Solon, Ohio. Donald C. Hutchins ("Hutchins") is an individual residing in Longmeadow, Massachusetts.

The Declaratory Judgment requested by Complient involves intellectual assets valued by Hutchins at over $3,500,000 dollars. Loss of these intellectual assets would damage Hutchins far in excess of the $75,000 threshold for Federal jurisdiction. Because Plaintiff, residing in Ohio, is suing Hutchins, residing in Massachusetts, for a judgment with a value in excess of $75,000, jurisdiction falls under the Federal Court System.

IV PLANTIFF'S CLAIMS ARE BARRED BY THE DOCTRINE OF RES JUDICATA.

Federal Case No. 04-30126-MAP preceded this sction and addresses the same issues as this Complaint filed in Ohio. The Complient Corporation has been enjoined in this federal case. To have parallel issues adjudicated in Ohio would result in needless duplicated effort and eventually to *res judicata*.

Under Ohio law,"[t]he doctrine of issue preclusion... holds that a fact or a point that was actually and directly at issue in a previous action, and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question as a subsequent action between the same parties or their privies, whether the cause of the actions be identical or different." Fort Frye

Teachers Assn. v. State Employment Relations Bd., 81 Ohio St. 3d 392,395; 692 N.E. 2d 140 (1998).

CONCLUSION

All of Plaintiff's claims should be dismissed because Plaintiff has failed to state a claim upon which relief can be granted. Count I should be dismissed because Plaintiff is not a party to the conditions precedent in the June 1, 1994 Licensing agreement and has no standing. Counts I, II, and III should be dismissed because this Court lacks jurisdiction to adjudicate whether there has been a breach of the June 1, 1994 agreement according to the terms of the agreement. Counts I, II, and III should also be dismissed because this Court lacks jurisdiction over the subject matter and persons.

Federal Case No. 04-30126-MAP preceded this action and addresses the same issues. To have parallel issues adjudicated in Ohio would result in needless duplicated effort and costs to the parties and eventually to *res judicata.* Therefore, Defendant, Donald C. Hutchins, requests this Court to dismiss all of the Plaintiff's claims.

Respectfully submitted,

DONALD C. HUTCHINS, pro se

Dated 9/20/04

_S/N_____
1047 Longmeadow Street
Longmeadow, MA 01106
(413) 567-0606

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

COMPLIENT CORPORATION 4670 Richmond Road Warrensville Heights, Ohio 44128 Plaintiff, v. Donald C. Hutchins 1047 Longmeadow Street Longmeadow, Massachusetts 01106 Defendant	CASE NO: CV04540066 JUDGE GALLAGHER **NOTICE OF APPEAL**

Notice is hereby given that Plaintiff, Donald C. Hutchins, in Case No. CV04540066 hereby respectfully appeals to the Court of Appeals of Ohio, Eighth Appellate District, for review of this decision granting Plaintiff Complient Corporation's Motion for Summary Judgment.

The Plaintiff, DONALD C. HUTCHINS, Pro Se

1047 Longmeadow Street
Longmeadow, Massachusetts 01106
(413) 567-0606

Answer to question #4:

There is an error in Complient's use of Summary Judgment. Hutchins asks Appellate Court to review trial court's summary judgment de novo. Grafton v. Ohio Edison Co. 77 Ohio St.3d 102 105, 1996-Ohio-336. The burden for summary judgment is on the movant (Complient) to show that there are no genuine issues of material facts that exist. There are genuine issues of fact that continue to be adjudicated in federal case No. 3:04-CV-30126 cited by Complient Motion for Summary Judgment. There has been no Hearing or opportunity for Hutchins to present the genuine issues of fact that are at issue.

* * * * * *

Answer to question 8

There is an error is Complient's reliance on res judicata. Complient applied res judicata to Donald C. Hutchins after it obtained a default judgment against a dissolved entity once called the CPR Prompt Corporation ("CPR Prompt"). CPR Prompt was dissolved in 2005 by order of its Board of Directors as reported to the Secretary of State of Massachusetts. CPR Prompt was not a plaintiff in federal case No. 3:04-CV-30126. CPR Prompt did not answer Complient's Complaint. CPR Prompt did not make an Appearance or file any Answer or Defense. Donald C. Hutchins is no longer an officer in the corporation nor did he make any attempt to defend the Defendant CPR Prompt pro se. Therefore Donald C. Hutchins was not privy for the purposes of res judicata. The Complient Corporation included the CPR Prompt Corporation in this action with the expressed purpose of using a judgment against CPR Prompt in the form of res judicata against Hutchins. This is not possible when CPR Prompt in no longer a legal entity and did not defend.

IN THE SUPREME COURT OF OHIO

Donald C. Hutchins,	)	
	)	On Appeal from the
Appellant	)	Cuyahoga County
	)	Court of Appeals,
v.	)	Eighth Appellate District
	)	Court of Appeals
	)	
Complient Corp.	)	Case No. 06087822
	)	
Appellee	)	

NOTICE OF APPEAL OF APPELLANT
DONALD C. HUTCHINS

Donald C. Hutchins, *Pro Se* (OF RECORD)
1047 Longmeadow Street
Longmeadow, Massachusetts 01106
(413) 567-0606
ACTING *PRO SE* TO DONALD C. HUTCHINS

William E. Coughlin (0010874)
Colleen Moran O'Neil (0066576) (COUNSEL OF RECORD)
CALFEE, HALTER & GRISWOLD LLP
1400 McDonald Investment Center
Cleveland, Ohio 44114
(216) 622-8200
Fax No. (216) 241-0816

COUNSEL FOR APPELLEE

Notice of Appeal of Appellant Donald C. Hutchins

Appellant Donald C. Hutchins hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appelate District, entered in Court of Appeals case No. 06087822 on March 16, 2006.

This case raises a number of substantial state and federal constitutional questions and is one of public or great general interest.

Respectfully submitted

Donald C. Hutchins, *Pro Se*

Certificate of Service

I, Donald C. Hutchins, 1047 Longmeadow, Massachusetts 01106, hereby certify that I served a copy of this Notice of Appeal by ordinary U.S. mail to counsel for Appellee Complient Corporation Colleen M. O'Neil, Esq., Calfee, Halter & Griswold, LLP, 1400 McDonald Investment Center, 800 Superior Avenue, Cleveland, Ohio 44114.

Dated: April 12, 2006

Donald C. Hutchins, *Pro Se*

IN THE SUPREME COURT OF OHIO

Donald C. Hutchins,	)	
	)	On Appeal from the
Appellant	)	Cuyahoga County
	)	Court of Appeals,
v.	)	Eighth Appellate District
	)	Court of Appeals
	)	
Complient Corp.	)	Case No. 06087822
	)	
Appellee	)	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT DONALD C. HUTCHINS

Donald C. Hutchins, *Pro Se* (OF RECORD)
1047 Longmeadow Street
Longmeadow, Massachusetts 01106
(413) 567-0606
ACTING *PRO SE* TO DONALD C. HUTCHINS

William E. Coughlin (0010874)
Colleen Moran O'Neil (0066576) (COUNSEL OF RECORD)
CALFEE, HALTER & GRISWOLD LLP
1400 McDonald Investment Center
Cleveland, Ohio 44114
(216) 622-8200
Fax No. (216) 241-0816
COUNSEL FOR APPELLEE

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC INTEREST AND INVOLVES SUBSTANTIAL STATE AND FEDERAL CONSTITUTIONAL QUESTIONS

This case presents ten issues critical for the future of resolving intellectual property questions mandated by Congress to be adjudicated solely under the jurisdiction of the federal court system: (1) whether a state may impose its jurisdiction over a legally filed and ongoing federal patent infringement action subject to the limits of the Due Process Clause of the Fourteenth Amendment. (2) whether a state may deprive a citizen of another state of property without due process of law subject to the limits of the Fifth Amendment. (3) whether $100,000 in punitive damages can be applied to a defendant and carried to Massachusetts

where such damages are not recognized with no evidence of a hearing or proof of malicious intent. (4) whether a joint and several damage claim can be awarded when the Complaint called for damages from only one party. (5) whether the originating court considered whether the defendant was proceeding *pro se*. (6) whether the originating court inappropriately resolved genuine issues of disputed fact. (7) whether the originating court applied erroneous legal conclusions. (8) whether the originating court provided a statement explaining its rulings that facilitates intelligent appellate review. (9) whether the reviewing court determined whether the originating court abused its discretion without leave to amend if it appeared that the allegations could be remedied through more specific pleading. (10) whether the originating court's orders could have *res judicata* effect on the ongoing and unresolved federal patent litigation. (11) whether the principle of "privity" and Ohio's prohibition against *pro se* representation for corporate entities be applied against a co-defendant defending *pro se*. (12) whether the movant in the originating court met its burden for summary judgment to show that no genuine issue of material fact exists. (13) whether the originating court asserted jurisdiction over the defendant in the context of our federal system of government to insure that the due process clause ensures not only fairness but also the orderly administration of the laws.

In this case, there is no record that the court of appeals reviewed the original action with reference to the defendant's rights to due process as a citizen of the United States. The court of appeals did not review the defendant's Motion to Dismiss that clearly showed the State of Ohio may not impose its jurisdiction over a legally filed and ongoing federal patent infringement action subject to the limits of the Due Process Clause of the Fourteenth

Amendment.

On February 14, 2006 the Complient Corporation filed a collection action No. HDCV2005-01115 ("115") against Donald C. Hutchins in the Commonwealth of Massachusetts as a result of the originating court's summary judgment. Massachusetts' action 115 included a lien in the amount of $280,000 on Hutchins' home. The court of appeals did not consider whether the decision by the originating court deprived the defendant, who is a citizen of another state, his property without due process of law subject to the limits of the Fifth Amendment.

The court of appeals did not consider whether the $100,000 in punitive damages should have been applied to the defendant Hutchins with no hearing by the originating court or proof of malicious intent on the part of Hutchins. The court of appeals did not consider whether joint and several damages were justifiable when the Complaint called for damages only against Hutchins. The Complaint against the co-defendant CPR Prompt Corporation called for the originating court to interpret one paragraph of a license agreement through a declaratory judgment. The declaratory judgment against the CPR Prompt Corporation was used through the means of *res judicata* to gain the summary judgment against the co-defendant Hutchins.

The court of appeals did not consider whether the originating court considered whether the defendant was proceeding *pro se,* whether the originating court inappropriately resolved genuine issues of disputed fact whether the originating court applied erroneous legal conclusions, whether the originating court provided a statement explaining its rulings that facilitates intelligent appellate review, whether the reviewing court determined whether the originating court abused its discretion without leave to amend if it appeared that the allegations could be remedied through more specific pleading, whether the

originating court's orders could have *res judicata* effect on the ongoing and unresolved federal patent litigation.

Justice O'Connor established the following standard for review for dismissal in Denton v. Hernandez (90_1846), 504 U.S. (1962) by writing:

> "Because the frivolousness determination is a discretionary one, a § 1915 dismissal is properly reviewed for an abuse of discretion. It would be appropriate for a court of appeals to consider, among other things, whether the plaintiff was proceeding *pro se*, whether the district court inappropriately resolved genuine issues of disputed fact, whether the court applied erroneous legal conclusions, whether the court provided a statement explaining the dismissal that facilitates intelligent appellate review, and whether the dismissal was with or without prejudice. With respect to the last factor, the reviewing court should determine whether the district court abused it discretion by dismissing the complaint with prejudice or without leave to amend if it appears that the allegations could be remedied through more specific pleading, since dismissal under § 1915(d) could have *res judicata* effect on frivolous determinations for future in *forma pauperis* petitions."

Hutchins' named co-defendant, the CPR Prompt Corporation was out of business when the Complaint was filed in the originating court. The CPR Prompt Corporation did not respond to the declaratory judgment Complaint by Complient. The quoted cost to obtain legal counsel for the Corporation was in excess of $20,000. Hutchins attended the first Hearing and attempted to represent the Corporation *pro se*. As a result Judge Gallagher refused the *pro se* representation and awarded a declaratory judgment to

Complient on grounds of non-appearance. The declaratory judgment against the CPR Prompt Corporation was used in terms of *res judicata* against Hutchins as co-defendant. Later in this action Complient asserted the principle of "privity" against Hutchins alleging that Hutchins and the CPR Prompt Corporation be treated as one person under the laws of Ohio. The court of appeals did not consider whether the principle of "privity" and Ohio's prohibition against *pro se* representation for corporate entities as applied against a co-defendant Hutchins who defended *pro se* were contradictory applications of the law.

The court of appeals did not consider whether the movant, Complient Corporation in the originating court met its burden for summary judgment to show that no genuine issue of material fact exists. The decision of the court of appeals failed to recognize that Judge Gallagher assured Hutchins that she would reserve judgment in the original Ohio action pending the outcome of the federal patent infringement case to which Complient had been joined and where all the parties and facts were present.

There is an error in Complient's use of Summary Judgement. Hutchins asks Supreme Court to review the originating court's summary judgment de novo. Grafton v. Ohio Edison Co. 77 Ohio St.3d 102 105, 1996-Ohio-336. The burden for summary judgment is on the movant (Complient) to show that there are no genuine issues of material facts that exist. There are genuine issues of fact that continue to be adjudicated in federal case No. 3:04-CV-30126 cited by Complient Motion for Summary Judgment. There was no Hearing or opportunity for Hutchins to present the genuine issues of fact that are at issue.

The Court of Appeals did not consider whether the originating court asserted jurisdiction over the defendant in the context of our federal system of government to insure

that the due process clause ensures not only fairness but also the orderly administration of the laws. If allowed to stand, the decision and lack of consideration of the court of appeals would ravage patent litigation which is the province of the federal government. It is apparent from the recently widely publicized *Blackberry* patent fracas that many citizens and corporate citizens of Ohio financed costly contingency plans when the patent holder claimed infringement the Research in Motion Corporation. The lawsuit in Ohio against Hutchins or any patent owner seeking redress if let stand threatens the orderly administration of the patent laws that were established by Congress.

STATEMENT OF THE CASE AND FACTS

1.) Hutchins is an inventor and the holder of many patents and copyrights including the intellectual properties ("properties") that embrace a device called CPR Prompt®. These CPR Prompt® properties owned by Hutchins are U.S. Patent 4,583,524, U.S. Patent Re 34,800, Canadian Patent 1249368, European Patent 01833462.

2.) Hutchins is forced to defend his properties from time to time against infringement. Generally a notice of infringement causes the offender to desist or continue under license to Hutchins. At times the only course open to Hutchins is to file a complaint against the violator in the federal courts that retain subject matter jurisdiction over patents, copyrights and trademarks.

3.) On July 2, 2004 Hutchins filed Civil Action 04-30127-MAP in the United States District Court, District of Massachusetts against Cardiac Science Inc., a company that disregarded his notice of infringement related to the manufacture and selling devices that infringed Hutchins' properties. Cardiac Science, Inc. was named sole defendant.

4.) The Compliant Corporation ("Compliant") was dissolved as a Delaware corporation in October of 2003. Compliant had abandoned a license of Hutchins' properties without notice in October of 2003 after being delinquent on royalty payments, reports and other obligations under the license agreement for six months.

5.) On August 27, 2004 Compliant filed Case Number CV04540066 ("066") in the Court of Common Pleas, Cuyahoga County, Cleveland, Ohio against Donald C. Hutchins and the CPR Prompt Corporation. Compliant was no longer in business as of August 27, 2004, the time 066 was filed.

6.) ¶ 38 of the 066 Complaint stated, "Hutchins' conduct in filing the Complaint in Hutchins v. Cardiac Science constitutes a tortious interference with the APA among Compliant, Cardiac Science and CPR L.P. for which Hutchins is liable to Compliant for compensatory and punitive damages in an amount to be determined at trial but which amount is in excess of $25,000.

7.) ¶ 49 of the 066 Complaint stated, Hutchins' wrongful and illegitimate filing of his Complaint against Cardiac Science in the Massachusetts District Court, Compliant has and will suffer compensatory and punitive damages in an amount to be determined at trial but which amount is in excess of $25,000 and includes, but is not limited to, any decline in the value of the shares of Cardiac Science common stock from October 21, 2004 to the date the stock is transferred to Compliant as well as any and all attorney fees and costs incurred by Compliant related to Cardiac Science's demand for indemnity.

8.) ¶ 58 of the 066 Complaint states, "An actual and justifiable controversy exists between Compliant and the Defendants with respect to the construction and effect of both Section 3.10 of the License Agreement and Section 1.2(I) of the APA.

9.) ¶ 59 goes on to state, "A decision (of the Court) is therefore necessary and appropriate under these circumstances in order that Complient may ascertain the construction and effect of both Section 3:10 of the License Agreement and Section 1.2(I) of the APA."

10.) With this benign request for a decision by the Court, Complient gained a declaratory judgment against the CPR Prompt Corporation immediately after the filing of 066 as per Exhibit A attached. Complient gained this declaratory judgment because the CPR Prompt Corporation made no appearance and did not answer or defend. Case law for the State of Ohio calls for a corporation to be represented by a licensed attorney. The CPR Prompt Corporation was in the state of dissolution and did not have the financial resources to underwrite the cost of representation in Ohio.

11.) Hutchins was forced to defend himself pro se in Cleveland, Ohio which is over 800 miles from his home in Massachusetts. At a short meeting in the Judges chambers Judge Gallagher advised Hutchins that further hearings could take place with conference calls. Judge Gallagher also stipulated that she would await a judgment in federal Civil Action 04-30127-MAP to guide her judgment in Ohio.

12.) Judge Gallagher was true to her word through the ensuing 8 months as she deferred the Ohio litigation. Finally she set a trail date for December of 2005 when it was expected the federal patent action would be finalized.

13.) However, on July 11th 2005 Complient's attorneys broke the silence by filing a Motion for Summary Judgment as to Donald C. Hutchins. This Summary Judgment included damage claims against only Hutchins for approximately $180,000 in compensatory and in punitive $100,000 damages as documented by

the Affidavit of Steven Lindseth attached as Exhibit B.

14.) It is clear from Steven Lindseth's Affidavit that the damages suffered by Complient were due to Complient's misrepresentations to Cardiac Science in the APA. The indemnification to Cardiac Science went to the treasury of Cardiac Science and not to Hutchins. Complient used Ohio action 066 only to extort money from Hutchins and to dissuade him from pursuing his federal patent infringement action to which the Complient Corporation had been joined.

15.) Complient's Summary Judgment Motion asserted claims for tortious interference, abuse of process, and for declaratory judgment. The Motion further stated that. "There exists no genuine issue of material fact with respect to Complient's claims against Hutchins, rendering Complient entitled to judgment in its favor as a matter of law."

16.) Complient was awarded this Summary Judgment by Judge Gallagher in a fleeting instant with no hearings, no trial, no docketed reference to Hutchins' counterclaims, no written final order and no consideration of the many material facts as presented by Hutchins in various answers and briefs. There is no transcript because there was no discussion to transcribe.

17.) In its Motion for Summary Judgement Complient declared that Hutchins is in privity with the CPR Prompt Corporation as the owner and President thereof. "*Res judicata* applies to Complient's claims against Hutchins by virtue of the default judgment obtained against CPR Prompt, Complient is entitled to summary judgment on Court III of its Complaint for declaratory judgment as a matter of law."

18.) Judge Gallagher's judgment was based primarily on *res judicata*. The earlier declaratory judgment against the CPR Prompt Corporation a shown herein as Exhibit

A was used in a domino effect against Hutchins. This declaratory judgment concerning the construction and effect of Section 3.10 of an obsolete license agreement was used in the form of *res judicata* to gain damages totaling $280,000 from Hutchins. There was never any deliberation or proof that Hutchins' conduct in filing the Complaint in Hutchins v. Cardiac Science constituted tortious interference.

19.) On November 16, 2005 Hutchins' wife was served with a Summons in a Massachusetts Civil Action 05-1115 to enforce a foreign judgment in excess of $280,000 including punitive damages in excess of $100,000 claiming Hutchins had failed to honor the judgment from the originating court in Ohio. Mrs. Hutchins is being treated for severe depression from the thought of losing her home simply because her husband attempted to reclaim his intellectual properties from the Cardiac Science Corporation

CONCLUSION

Steven Lindseth recently stated to Robert Hutchins that he would destroy Don Hutchins life. Hutchins prays that this Supreme Court can find the time to right these terrible wrongs and say to the wealthy and powerful Lindseth family, that they can not use the Ohio Court system to for purposes of vengeance. The appellant requests that this court accept jurisdiction in this case so that the important issues of constitutional law will be reviewed on the merits.

Respectfully submitted

The Appellant

Donald C. Hutchins, Pro Se

Dated: April 12, 2006 _____

1047 Longmeadow Street
Longmeadow, Massachusetts 01106
(413) 567-0606

IN THE SUPREME COURT OF OHIO

Donald C. Hutchins,	)	
	)	On Appeal from the
Appellant	)	Cuyahoga County
	)	Court of Appeals,
v.	)	Eighth Appellate District
	)	Court of Appeals
	)	
Complient Corp.	)	Case No. 06087822
	)	
Appellee	)	

MERIT BRIEF OF APPELLANT DONALD C. HUTCHINS

Donald C. Hutchins, *Pro Se* (OF RECORD)
1047 Longmeadow Street
Longmeadow, Massachusetts 01106
(413) 567-0606
ACTING *PRO SE* TO DONALD C. HUTCHINS

William E. Coughlin (0010874)
Colleen Moran O'Neil (0066576) (COUNSEL OF RECORD)
CALFEE, HALTER & GRISWOLD LLP
1400 McDonald Investment Center
Cleveland, Ohio 44114
(216) 622-8200
Fax No. (216) 241-0816
COUNSEL FOR APPELLEE

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Proposition of Law No. III:
Court's injudicious use of *res judicata*. 5

Proposition of Law No. IV:
Defendant's Fifth Amendment rights to due process. 6

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Notice of Appeal to the Ohio Supreme Court iv
Journal Entry from which the Appeal is taken v
Opinion – There was no opinion rendered by the originating court – Only a docketed entry by postcard was sent to Hutchins in Massachusetts weeks after the decision of summary judgment was allowed.

CONSTITUTIONAL PROVISIONS:

Fifth Amendment to the U.S. Constitution
Fourteenth Amendment to the U.S. Constitution

CASES:

Denton v. Hernandez (90_1846), 504 U.S. (1962).

Grafton v. Ohio Edison Co. 77 Ohio St.3d 102 105, 1996-Ohio-336.